

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CRYSTAL M.,)	2 CA-JV 2011-0066
)	DEPARTMENT A
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and MICHAEL C.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19416900

Honorable Peter Hochuli, Judge Pro Tempore

AFFIRMED

Ronald Zack, PLC
By Ronald Zack

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Amanda Holquin

Mesa
Attorneys for Appellee Arizona
Department of Economic Security

E C K E R S T R O M, Presiding Judge.

¶1 Crystal M. appeals from the juvenile court’s order continuing the dependency of her son, Michael C., born in January 2010.¹ Crystal challenges the court’s ruling from the June 2011 dependency review hearing, in which the court found “the status of dependency continues to exist, the parents are in partial compliance with the case plan, and the Department has made reasonable efforts to achieve permanency for the minor.” On appeal, Crystal contends the court abused its discretion by finding the dependency continued to exist based on the presentation of “only” speculative evidence at the dependency review hearing. For the reasons stated below, we affirm.

¶2 We will not disturb the juvenile court’s order absent a clear abuse of discretion. *See In re Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We will affirm the court’s order “unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *In re Pima Cnty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). As the petitioner, the Arizona Department of Economic Security (ADES) was required to prove the allegations of the dependency petition by a preponderance of the evidence. *See* A.R.S. § 8-844(C)(1); Ariz. R. P. Juv. Ct. 55(C). On appeal, we view the evidence in the light most favorable to sustaining the court’s ruling. *See Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). We do not reweigh the evidence presented at the dependency hearing because, as the trier of fact, the juvenile court “is in the best position to weigh the evidence, observe

¹Michael also was adjudicated dependent as to his father, who is not a party to this appeal. In addition, Crystal relinquished her parental rights to Michael’s two older half-siblings.

the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶3 A dependent child is a child “[i]n need of proper and effective parental care and control and who has no parent or guardian . . . willing to exercise or capable of exercising such care and control,” or “[a] child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent.” A.R.S. § 8-201(13)(a)(i), (iii). The record establishes that, based on reports of physical abuse to the children at the hands of Michael’s father, Crystal’s failure to prevent that abuse, and domestic violence between the father and Crystal, Michael was removed from the family home in March 2010, shortly after which ADES filed a dependency petition.

¶4 At the April 2010 preliminary protective hearing, the juvenile court ordered that Crystal “have no contact of any kind with the father of Michael.” The court adjudicated Michael dependent as to Crystal in May 2010 and approved a case plan goal of family reunification. ADES provided Crystal with services that included individual counseling, anger management and parenting classes, supervised visitation, a psychological evaluation, and participation in a healthy-relationship treatment program. In January 2011, ADES filed a motion to terminate the parents’ rights to Michael. As grounds for termination of Crystal’s parental rights, the motion alleged that she had neglected or abused Michael, and that she suffered from mental illness or had been

chronically abusing substances.² *See* A.R.S. § 8-533(B)(2), (3). The motion also alleged that termination was in Michael's best interests.

¶5 At the June 2011 dependency review hearing, ADES submitted, without objection, the May 2011 addendum report of the case manager, Wendy Williamson, to the juvenile court. The attorney for the state then told the court, "I will let the report speak for itself. We don't have any issues today." In the report, Williamson detailed Crystal's lack of compliance with the case plan goals, specifically noting numerous instances when Crystal had failed to attend scheduled individual therapy sessions and healthy-relationship treatment groups, and her failure to complete two parenting education programs in which she had been enrolled. Williamson also noted Crystal had not provided proof that she had obtained and maintained a "safe, stable residence in her own name," as the case plan required. Rather, Crystal reported she was living with Michael's paternal grandmother.

¶6 Moreover, the addendum report included the comments of the author of the monthly report for the healthy-relationship group, who noted, "[Crystal] verbalizes her intellectual understanding of why she should not have contact with her ex-boyfriend [presumably, Michael's father] and then will state, she is addicted to him and understands this could cost her, her children." The report further observed that "[Crystal]

²The contested termination hearing took place in May and June 2011. At the conclusion of the fourth day of the hearing on June 13, 2011, the juvenile court affirmed the dependency review hearing set for the following day, the ruling from which this appeal was taken, and affirmed day five of the severance hearing, set for July 7, 2011. Although we cannot tell from this record, according to ADES, the severance hearing concluded in September 2011. It does not appear the juvenile court has ruled on the severance matter to date.

acknowledges she knows what she should be doing and even knows how to do some of it, however her follow through is inconsistent.” Crystal’s individual therapist also reported her treatment providers had noted Crystal “sometimes seem[s] like she is [just] going through the motions” in the sessions and questioned whether she was “making genuine changes and applying the information learned” in treatment.

¶7 Crystal’s attorney, Ronald Zack, questioned Williamson at the June dependency review hearing:

[Williamson]: My position is that there is a lack of honesty on the part of the mother and I believe that that lack of honesty precludes her from being able to fully benefit from all of the services that CPS is offering.

[Zack]: What do you base that opinion on?

[Williamson]: I base that opinion on evidence which will be presented at the severance that the parents are still continuing to have contact with one another although they deny that verbally when asked.

[Zack]: And if the parents were not continuing to have contact you wouldn’t have an issue with her honesty?

[Williamson]: I think that’s fair to say. My biggest concern is the lack of honesty about . . . her ongoing relationship with the father.

¶8 Williamson testified about telephone records and transcribed telephone calls showing that Crystal and Michael’s father had communicated during his recent incarceration. Williamson also testified that Crystal had told her about these conversations and had admitted to Williamson that she had not disclosed this information to her therapist or healthy-relationships treatment provider. Williamson further testified

she had received reports that Crystal and Michael's father had been "spotted together shopping, arm and arm," in the community.

¶9 At the conclusion of the hearing, Zack asked the court to find there was no longer a dependency and ADES had not made reasonable efforts, in addition to asking for "a little bit of time" to present additional testimony to explain Crystal's sporadic participation in individual therapy. Concluding it did not need additional testimony, the court ruled the status of the dependency continued to exist, Crystal was in partial compliance with her case plan, and ADES had made reasonable efforts to carry out the case plan goal to achieve permanency for Michael.

¶10 We initially note that Crystal has not disputed the propriety of the initial dependency adjudication. In fact, she stipulated to the allegations in the first amended dependency petition. Rather, she contends that, when Williamson testified that ADES would provide evidence at the severance hearing to support her claim that Crystal had not been honest about her ongoing relationship with Michael's father, that testimony was "speculative." She further argues the court abused its discretion by affirming the dependency based on such evidence. Notably, Williamson's written report, the contents of which were uncontroverted, provided reasonable evidence to support the juvenile court's finding that the dependency status continued to exist. *See Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038; *see also* Ariz. R. P. Juv. Ct. 58(E) (absent objection by any party, at review hearing court may consider oral or written reports of parties).

¶11 However, even assuming without deciding that the juvenile court improperly considered Williamson's testimony regarding Crystal's contact with

Michael's father, the balance of Williamson's testimony and the information contained in the addendum report to the juvenile court nonetheless provided the court with ample evidence to support its ruling that the dependency status continued to exist and that ADES had continued to make reasonable efforts to provide appropriate services. Because "[t]he primary consideration in a dependency case is always the best interest of the child[,] . . . the juvenile court is vested with 'a great deal of discretion.'" *Ariz. Dep't of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994), quoting *In re Cochise Cnty. Juv. Action No. 5666-J*, 133 Ariz. 157, 160, 650 P.2d 459, 462 (1982).

¶12 For the reasons stated, we affirm the juvenile court's June 2011 dependency ruling.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge